

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0255**

Syrrome James Phylip Moos, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed August 30, 2021
Affirmed
Larkin, Judge**

Lyon County District Court
File No. 42-CR-09-943

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Lauermann, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Richard R. Maes, Lyon County Attorney, Abby Wikelius, Assistant County Attorney, Marshall, Minnesota (for respondent)

Considered and decided by Jesson, Presiding Judge; Larkin, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges the postconviction court's summary denial of his petition for relief as untimely. We affirm.

FACTS

In September 2009, respondent State of Minnesota charged appellant Syrrome James Phylip Moos with two counts of domestic assault and one count of false imprisonment. Moos pleaded guilty to one count of domestic assault in January 2010. The district court stayed execution of an 18-month prison sentence and placed Moos on probation for five years. In November 2013, the district court revoked Moos's probation and executed his prison sentence.

On July 13, 2020, Moos petitioned for postconviction relief, requesting to withdraw his guilty plea. Moos argued that his plea was involuntary because his attorney told him there would be no additional repercussions if he pleaded guilty and because he was not informed that he would have to register as a predatory offender. Upon being committed to prison in 2014, Moos was required to register as a predatory offender. Moos alleged that if he had known about the predatory-offender-registration requirement, he never would have pleaded guilty. He also alleged that he was unable to find an attorney who would help him until 2019.

After two rounds of briefing by the parties, the postconviction court denied Moos's petition without a hearing, reasoning that the petition was time-barred. Moos appeals.

DECISION

A person convicted of a crime may seek postconviction relief by filing a petition claiming that the conviction “violated the person’s rights under the Constitution or laws of the United States or of the state.” Minn. Stat. § 590.01, subd. 1(1) (2020). We review the denial of a petition for postconviction relief for an abuse of discretion. *Rhodes v. State*, 875 N.W.2d 779, 786 (Minn. 2016). A postconviction court abuses its discretion when it “exercise[s] its discretion in an arbitrary or capricious manner, base[s] its ruling on an erroneous view of the law, or [makes] clearly erroneous factual findings.” *Id.* (quotation omitted).

Moos contends that the postconviction court abused its discretion by rejecting his petition as untimely. If no direct appeal is filed, as is the case here, a postconviction petition must be filed within two years of the entry of judgment of conviction or sentence. Minn. Stat. § 590.01, subd. 4(a)(1) (2020). There are five exceptions to that two-year time limit. *Id.*, subd. 4(b) (2020). Moos argues that the interest-of-justice exception applies here, which requires the petitioner to establish “that the petition is not frivolous and is in the interests of justice.” *Id.*, subd. 4(b)(5).

A claim under the interests-of-justice exception “must be filed within two years of the date the claim arises.” *Id.*, subd. 4(c) (2020). Such a claim arises when the petitioner “knew or should have known that he had a claim.” *Sanchez v. State*, 816 N.W.2d 550, 560 (Minn. 2012). That standard is objective, and not subjective. *Id.* at 558-59. “[T]he interests-of-justice referred to in subdivision 4(b)(5) relate to the *reason* the petition was filed after the 2-year time limit in subdivision 4(a), [and] not the *substantive claims* in the

petition.” *Id.* at 557. The determination of when an interests-of-justice claim arose is a question of fact that we review for clear error. *Id.* at 560.

Once again, Moos asserts that his guilty plea was not voluntary because his attorney did not inform him that he would have to register as a predatory offender. According to the affidavit that Moos submitted in support of his postconviction petition, he learned of the registration requirement when he went to prison in 2014. Indeed, the record includes a predatory-offender-registration form that Moos executed on January 15, 2014. Based on that evidence, the postconviction court did not clearly err by finding that Moos’s claim under the interests-of-justice exception arose in January 2014. Because Moos did not file his postconviction petition until July 2020 – more than six years after he knew or should have known of his claim – the postconviction court did not abuse its discretion by denying Moos’s petition as untimely.

Moos contends that the postconviction court should have tolled the two-year time limit based on extraordinary circumstances. Specifically, he argues that he had difficulty obtaining legal assistance for several years before he finally learned more about potential relief after talking with someone from the Office of the Minnesota Appellate Public Defender in 2019.

The Minnesota Supreme Court in *Sanchez* suggested that the two-year time limit may be equitably tolled if a petitioner “pursu[ed] his rights reasonably diligently” and “some extraordinary circumstance” prevented him from filing his petition on time. *Id.* at 561. However, the supreme court has declined to address a request for equitable tolling that was not first made in the postconviction court. *Greer v. State*, 836 N.W.2d 520, 523

n.4 (Minn. 2013). This court generally does not consider an argument for the first time on appeal from a postconviction petition. *Davis v. State*, 784 N.W.2d 387, 391 (Minn. 2010).

Because Moos did not request equitable tolling in the postconviction court, that issue is not properly before us in this appeal. Thus, we do not consider the merits of Moos's equitable-tolling argument except to observe that although it is no doubt difficult for an inmate to access legal counsel, Moos was able to do so here by communicating with the Office of the Minnesota Appellate Public Defender.

Affirmed.